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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 PHILLIP A. MARLOW,

8 Petitioner,

v.

9 SCOTT FRAKES,

10 Respondent.

No. C10-5085 BHS/KLS

REPORT AND RECOMMENDATION
Noted for: March 19, 2010

11 This case has been referred to Magistrate Judge Karen L. Strombom pursuant to 28
12 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner is an inmate at the Monroe Correctional
13 Complex (MCC/MSU). He has filed a petition for writ of *habeas corpus* pursuant to 28 U.S.C. §
14 2254 and an application to proceed *in forma pauperis*. Dkt. 1. Because Petitioner appears to
15 have sufficient funds with which to pay the \$5.00 court filing fee, the undersigned recommends
16 the Court deny the application.

DISCUSSION

17 A district court may permit indigent litigants to proceed in forma pauperis upon
18 completion of a proper affidavit of indigency. See 28 U.S.C. §1915(a). However, the court has
19 broad discretion in denying an application to proceed in forma pauperis. *Weller v. Dickson*, 314
20 F.2d 598 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).

22 Several district courts have ruled that denial of *in forma pauperis* status is not
23 unreasonable when a prisoner is able to pay the initial expenses required to commence a lawsuit.
24 *See Temple v. Ellerthorpe*, 586 F.Supp. 848 (D.R.I. 1984); *Braden v. Estelle*, 428 F.Supp. 595
25 (S.D.Tex. 1977); *U.S. ex rel. Irons v. Com. of Pa.*, 407 F.Supp. 746 (M.D.Pa. 1976); *Shimabuku*

¹ *v. Britton*, 357 F.Supp. 825 (D.Kan. 1973), *aff'd*, 503 F.2d 38 (10th Cir. 1974); *Ward v. Werner*, 61 F.R.D. 639 (M.D.Pa. 1974).

3 By requesting the Court to proceed *in forma pauperis*, Petitioner is asking the
4 government to incur the filing fee because he allegedly is unable to afford the costs necessary to
5 proceed with his petition for *habeas corpus*. Petitioner's application reflects that he is employed
6 at MCC/MSU, earns \$55.00 per month, and that he has an average spendable balance of \$26.92.
7 Dkt. 1, pp. 1 and 8. The undersigned recognizes that the funds to which Petitioner has access
8 may not be great. However, given the fact that a prisoner's basic needs are provided for while he
9 is incarcerated and the minimal filing fee required to proceed with this action (\$5.00), it is not
10 unreasonable to expect Petitioner to pay that fee from those funds.

CONCLUSION

Because Petitioner appears to have sufficient funds to pay the filing fee, the undersigned
recommends that the Court deny his application to proceed *in forma pauperis*.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil Procedure (“Fed. R. Civ. P.”), Petitioner shall have fourteen (14) days from service of this Report and Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed set this matter for consideration on **March 19, 2010**, as noted in the caption.

DATED this 23rd day of February, 2010.


Karen L. Strombom
Karen L. Strombom
United States Magistrate Judge